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1401 H Street, N.W.
Suite 1020
Washington, D.C. 20005
Office 202/326-3810

Ameritech

Celia Nogales
Director - Federal Relations

July 29, 1999

Ms. Magalie Roman Salas, Secretary
Federal Communications Commission
The Portals
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte Presentation**
CC Docket 96-115

Dear Ms. Salas:

On Wednesday, July 28, 1999 and Thursday, July 29, 1999, Ben Almond (BellSouth), Kathy Rehmer (SBC), Larry Katz (Bell Atlantic), Elridge Stafford (US West), and I met, in separate meetings, with Bill Baily, Legal Advisor to Commissioner Furchtgott-Roth, Linda Kinney, Legal Advisor to Commissioner Ness, Steve Buttacavoli, Office of Commissioner Ness, Peter Tenhula, Legal Advisor to Commissioner Powell, and Sarah Whitesell, Legal Advisor to Commissioner Tristani to discuss the above referenced proceeding. The attached documents were used during the meeting which focused on the use of CPNI to market CPE/information services, the use of CPNI for winback purposes, and the industry coalition's electronic safeguards proposal.

Sincerely,

Celia Nogales

Attachment
cc: B. Bailey
L. Kinney
S. Buttacavoli
P. Tenhula
S. Whitesell

RBOC Coalition Ex Parte
USE OF CPNI FOR CPE/INFORMATION SERVICES

Legal Support	CPE	INFORMATION SERVICES

222(c)(1)(B) – services necessary to or used in the provision of such telecommunications service	• FCC has frequently defined provision of equipment on a customer prem, including CPE, as part of the related service
	• FCC Order found inside wire installation, maintenance and repair is necessary to, and used in the provision of telecom services and allowed CPE from any telecom service to be used to market/sell inside wiring e.g., routers, hubs, network file servers and wireless LANs, all of which are CPE.
	• FCC previously held that certain items of equipment on a customer prem is necessary part of telecom service: multiplexers, channel banks and loopback testing devices.
	• FCC Order at Para 77 – suggest future examination of public interest in allowing carriers to market CPE within context of TSA
	• Coalition believes this interpretation would eliminate unintended, bizarre results when carrier can, without CPNI
		• The Information Service capability is "used in" the completion of end-to-end communications:
		  • Call answering, voicemail or messaging, voice store & retrieval, facilitate answering a call upon a busy or no answer and recording the message for later delivery or retrieval.
		  • Fax, store & forward stores a fax message until the fax machine is available at which time the message is delivered.
		  • The Internet Access information service allows the communication to be successfully completed within the Internet database.
		  • Protocol Conversions are needed to complete communications and are therefore "necessary to and used in" the telecommunications services with which the conversion is associated.

	approval, market, for example, Caller ID, but not the display unit. This outcome does not meet customer expectations as some customers perceive the CPE to be part of the service.	
Implied/Inferred Consent under Total Service Approach	• Do not need a collapsing of the baskets to achieve so TSA stays in tact; customer affirmative approval still required between baskets. • TSA is based on inferred consent and nothing in the statute limits this to telecommunications services • Inferred Consent need only be logically extended to include what customers perceive to be part of a telecommunications service – could talk about Ameritech studies here • Paragraph 95 acknowledges that CPNI would be a more useful tool in the context of entry into these service areas, [local and long distance markets] in contrast with the limited context of CPE and enhanced services.	• Do not need a collapsing of the baskets to achieve so TSA stays in tact; customer affirmative approval still required between baskets. • TSA is based on inferred consent and nothing in the statute limits this to telecommunications services • Inferred Consent need only be logically extended to include what customers perceive to be part of a telecommunications service – could talk about Ameritech studies here • Could use same arguments under 222(c)(1)(B) as to why these related information services can be marketed using CPNI without customer consent. • Paragraph 95 acknowledges that CPNI would be a more useful tool in the context of entry into these service areas, [local and long distance markets] in contrast with the limited context of CPE and enhanced services.

AT&T

Judy Sello
Senior Attorney

Room 3245G1
295 North Maple Avenue
Basking Ridge, NJ 07920
908 221-8984

January 12, 1999

Ms. Carol Mattey
Chief, Policy & Planning Division
Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW, Room 544
Washington, DC 20554

Re: **CC Docket No. 96-115: CPNI Electronic Safeguards**.

Dear Ms. Mattey:

Per your request, this will summarize the points that I made on behalf of the CPNI Coalition in our *ex parte* meeting on January 8, 1999 (see formal *ex parte* letter and written proposal that were filed at the FCC on January 11, 1999). In the pending petitions for reconsideration in this docket, virtually all carriers had challenged the Commission's *CPNI Order*[1] adopting rules imposing electronic safeguards, namely, (i) flagging, and (ii) electronic auditing. 47 C.F.R. Sections 64.2009(a) and (c).

The purpose of the flagging requirement (Section 64.2009(a)) is that carrier personnel engaged in marketing activities are able to determine customer CPNI approval status in order to use, or refrain from using, CPNI to market products and services outside of the service category to which the customer subscribes (*i.e.*, local, interexchange, and CMRS). As demonstrated by the record, the flagging requirement is problematic and costly for various carriers, both large and small. For example, although most AT&T's consumer databases can quite readily accommodate a first screen flag, its business customer systems cannot. Moreover, some smaller carriers do not use electronic databases. Also, many carriers have databases that contain customer records from only one service category and plan to use that database to offer services within that one service category to their existing customers, thereby negating the need to flag the accounts in that

[1] *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information,* CC Docket No. 96-115, Second Report and Order and Further Notice of Proposed Rulemaking, FCC 98-27, released February 26, 1998 *("CPNI Order").*

database. Thus, an inflexible first screen flag rule is not a cost-effective solution to the Commission's goal of ensuring that carriers do not misuse CPNI.

The CPNI Coalition's proposed modification of Section 64.2009(a) effectuates the goal of the Commission's flagging rule in a less burdensome and more effective manner. Specifically, it requires each carrier to establish guidelines that direct its marketing personnel (*i.e.*, any personnel engaged in marketing) to determine a customer's CPNI approval and service subscription status prior to using CPNI for out-of-category marketing. It further requires that the approval and status information be available, either electronically or in some other manner, to marketing personnel in a readily accessible and easily understandable format. Thus, the Coalition's proposed modification would permit carriers to use a first screen flag, a centralized database or non-electronic means, whichever is most cost-effective for the carrier and its particular business unit. At the same time, the Commission's policy goal of ensuring that carriers do not misuse CPNI is carried out by the requirements that (i) carriers direct that the customer's CPNI approval and service subscription status be determined prior to use of CPNI for marketing a product or service outside of the service category to which the customer subscribes, and that (ii) this information be made available by the carrier to its personnel engaged in marketing in a readily accessible and easily understandable format.

The Commission's electronic auditing requirement (Section 64.2009(c)) would require carriers to electronically track access to individual customer accounts. This requirement would generate massive and senseless data storage requirements, which in MCI WorldCom's estimation would cost it alone $1 billion annually. Other carriers also estimated costs associated with this requirement to run into the hundreds of millions of dollars - - an expenditure without any demonstrated offsetting consumer dividend or need.

Accordingly, the CPNI Coalition suggests that the purpose of the electronic auditing rule, namely, to track how CPNI is used, could be better effectuated by the proposed modifications to Sections 64.2009(c) and (e). The revised electronic auditing rule (Section 64.2009(c)) would require each carrier to maintain a file, either electronically or in some other manner, of its marketing campaigns that use CPNI, that includes a description of the campaign and the CPNI that was used in the campaign, its date and purpose, and what products and services were offered as part of the campaign. This record would show how the carrier was using CPNI in its outbound and inbound marketing efforts and provide the means to investigate should a dispute or complaint occur.

Section 64.2009(c), coupled with the proposed clarification of the officer certification requirement (Section 64.2009(e)) that would require each carrier to establish an internal compliance oversight function to monitor ongoing CPNI compliance efforts and conduct an annual CPNI compliance review, ensures that the Commission's goal that access to CPNI is appropriate is met. The proposed rules accomplish this by testing through the internal oversight process whether the carrier's CPNI training has been effective and its employees are using CPNI consistently with the substantive requirements of the Commission's rules. Thus, under the CPNI Coalition's proposal, the more limited tracking

under Section 64.2009(c) is offset by an internal audit under Section 64.2009(e). This audit, instead of compiling billions of useless bits of access data regarding individual accounts under the Commission's electronic auditing rule, actually tests the efficacy of the carrier's CPNI compliance program.

The CPNI Coalition also proposed two other revisions to Section 64.2009(e): (i) changing "corporate officer" to "officer," and (ii) eliminating the requirement that the officer have "personal knowledge" of the carrier's CPNI compliance. Some smaller carriers are sole proprietorships, partnerships or cooperatives, rather than corporations. For larger carriers, the officer certifying CPNI compliance would rarely have personal knowledge but rather is likely to rely on the input from company managers. Removing the personal knowledge requirement is consistent with this fact as well as with typical attestations that require certification "to the best of my knowledge, information and belief."

Finally, the CPNI Coalition made the point that it is not surprising that there is no widespread consumer group interest in the electronic safeguards aspect of the Commission's CPNI proceeding. First, most carriers have been dealing responsibly with CPNI for decades, and there is no outstanding consumer privacy issue to be addressed. Second, the electronic safeguards requirements are internal carrier compliance mechanisms that do not directly implicate areas of consumer interest such as the type of CPNI notice consumers receive from carriers concerning their CPNI rights and the form of approval that the consumer provides the carrier. Third, there are other rules that impact consumer privacy, such as the Caller ID rules (Section 64.1200), that have worked well where the Commission has set forth the substantive privacy protections but has not sought to create a blueprint for how the carrier uses its systems to effectuate compliance.

For all of these reasons, the CPNI Coalition strongly urges the Commission to take action to eliminate the inordinately costly electronic auditing and first screen flag requirements of the *CPNI Order*, in favor of the proposed alternatives that achieve the Commission's public policy objectives without unnecessarily burdening carriers and their customers.

Sincerely,

Judy Sello/ha

Judy Sello

Copies to:

Thomas Power
James Casserly
Kevin Martin
Kyle Dixon
Paul Gallant
Larry Strickling
Bill Agee
Anthony Mastando
Jeanine Poltronieri
Peter Wolfe
FCC Secretary's Office